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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N.W.

Washington, D.C. 20536

File:

Office: Nebraska Service Center

Date:

JAN 27 2004

IN RE: Petitioner:

Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

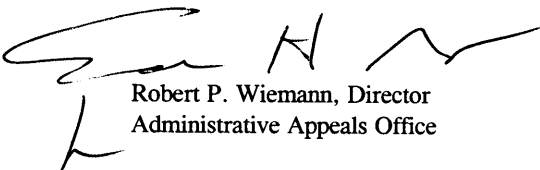
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer consultancy firm. It seeks to employ the beneficiary permanently as a software marketing engineer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification.

On appeal, counsel contends that the director erred in concluding that the petitioner did not possess the minimum requirements as listed in the ETA-750.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is December 10, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification (Form ETA 750) indicated that the position of software marketing engineer required a Bachelor's degree in Computer Science, Business Administration, MIS, or Engg., or its foreign educational equivalent and two years of experience in the job offered, or two years of experience in the related occupation of business development manager. At block #15, Other Special Requirements are listed as experience must include at least 2 years of experience marketing ERP Applications.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits a copy of the beneficiary's Bachelor of Commerce degree from the University of Bombay conferred upon him in January 24, 1994. The petitioner further submits a copy of a post-graduate diploma in business administration issued to the beneficiary by the K.J. Somaiya Institute of Management Studies and Research on April 12, 1998.

An academic evaluation from the Trustforte Corporation was also submitted in support of the petition. This evaluation states that the beneficiary's academic studies at the University of Bombay "satisfied similar requirements to the completion of three years of academic studies leading to a Bachelor of Business

Administration Degree from an accredited US institution of higher education."

The director denied the petition, concluding that the beneficiary did not possess a foreign degree equivalent to a United States baccalaureate degree. We concur. It is noted that India's educational degree structure provides for both three-year and four-year bachelor's degree programs. Bachelor degrees in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in fields such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally require four years of higher education. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (last updated October, 2001) (<http://www.education.nic.in/htmlweb/higedu.htm>).

On appeal, counsel contends that the beneficiary's foreign education is "the equivalent of at least a baccalaureate degree in Business Administration as required by the application for Alien Employment Certification." The regulation at 8 C.F.R. § 204.5(1)(2) specifically defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and is a member of the professions." (Emphasis added). In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific college degree. In this case, the labor certification plainly requires that the job candidate have a bachelor's degree in one of four specified fields of study.

A combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree, is not a foreign equivalent bachelor's degree. If supported by a proper credential evaluation, a four-year baccalaureate degree from India could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the Trustforte Corporation's evaluation provides that the beneficiary's three years of academic study at the University of Bombay represent three years of university study in the United States, rather than a bachelor's degree. We note that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245. Based on similar reasoning, it cannot be concluded that the beneficiary's three-year Bachelor of Science degree from the University of Bombay is a foreign equivalent degree to a United States baccalaureate degree.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses a foreign degree which is the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.